



## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2023-0007]

#### Notice of Intent to Prepare an Environmental Impact Statement for Oregon

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement; notice of public meetings; request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA), as the lead agency, announces its intent to prepare an Environmental Impact Statement (EIS) for the implementation of the plan for National Flood Insurance Program (NFIP) – Endangered Species Act (ESA) Integration in Oregon. FEMA released a draft of this plan in October 2021. Notice is hereby given that the public scoping process has begun for the preparation of an EIS for the proposed action. The purpose of the scoping process is to solicit public comments regarding the range of issues, information, and analyses relevant to the proposed action, including potential environmental impacts and reasonable alternatives to address in the EIS. This notice also notifies the public that FEMA intends to host in-person and virtual public scoping meetings, host a web-based scoping room to provide additional information to the public, and solicit comments on potential issues, concerns, and reasonable alternatives that FEMA should consider. FEMA is preparing this EIS in compliance with the National Environmental Policy Act (NEPA) of 1969 and the NEPA regulations implemented by the Council on Environmental Quality as of the date of this Notice.

**DATES:** Comments and related material must be received by FEMA on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. FEMA will hold at least two virtual public scoping meetings and at least

two in-person public scoping meetings in Oregon at the times, dates, and locations listed on the project EIS website (see **ADDRESSES** section of this document). Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

**ADDRESSES:** The project EIS website with the draft plan and public meeting information is at <https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration>. You may provide oral or written comments at either the in-person or virtual public scoping meetings. You may also provide written comments via the Federal eRulemaking Portal at <https://www.regulations.gov>. Search for FEMA-2023-0007 and follow the instructions for submitting comments.

All submissions must include the agency name and Docket ID for this notice. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security notice, which can be viewed by clicking on the “Privacy and Security Notice” link on the homepage of [www.regulations.gov](http://www.regulations.gov). Commenters are encouraged to identify the number of the specific question or questions to which they are responding. For access to the docket and to read comments received by FEMA, go to <https://www.regulations.gov> and search for Docket ID FEMA-2023-0007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Science Kilner, Regional Environmental Officer, FEMA Region 10, [FEMA-R10-ESAccomments@fema.dhs.gov](mailto:FEMA-R10-ESAccomments@fema.dhs.gov), 425-487-4713, or visit the EIS website (see **ADDRESSES** above).

**SUPPLEMENTARY INFORMATION:** FEMA administers the National Flood Insurance Program (NFIP), a nationwide program that reduces future flood damage by

requiring minimum floodplain management standards and provides protection for property owners against potential flood losses through insurance. The NFIP was established by the United States Congress in 1968 with the passage of the National Flood Insurance Act (NFIA). This law mandated that FEMA identify the nation's flood-prone areas and make insurance available to participating communities (local, tribal, and state governments) that implement floodplain management requirements that meet or exceed the minimum standards of the program. The NFIP is the primary source of flood insurance coverage for residential properties in the United States.

The NFIP also engages in many “noninsurance” activities to serve the public interest. These include identifying and mapping flood hazards, disseminating flood-risk information through flood maps, and setting minimum floodplain management standards for community participation. The NFIP contributes to community resilience by setting minimum standards and offering incentive programs such as the Community Rating System (CRS). Through the CRS, communities are credited for activities that exceed FEMA's minimum NFIP requirements and further reduce flood risk.

Participation in the NFIP is voluntary but necessary for communities to obtain access to NFIP flood insurance. This insurance is designed to protect against the risk of flood losses, thus reducing the escalating costs of repairing damage to buildings and their contents caused by floods. FEMA sets the minimum standards for participating communities through regulation for participants, although communities may adopt stricter standards. Participating communities are responsible for adoption and enforcement of the floodplain management standards. However, FEMA may place communities on probation or suspend them if they fail to adopt or enforce the minimum standards. (44 CFR 59.22(a-b)). If communities do not remedy the issue, they may be removed from the program. (44 CFR 59.22(c)).

As a Federal agency, FEMA must consider whether NFIP activities affect listed threatened or endangered species protected by the Endangered Species Act (ESA). Under Section 7 of the ESA, FEMA is required to consult with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) (collectively “the Services”) when any action the agency carries out, funds, or authorizes may affect a listed endangered or threatened species or adversely modify the designated critical habitat of such species. A lawsuit brought against FEMA in 2009 by Portland Audubon Society, et al., sought to highlight the agency’s failure to consult with the Services on the implementation of the NFIP in Oregon. A settlement agreement was reached in 2010, and FEMA initiated informal consultation with NMFS soon after. In July 2011, FEMA initiated formal consultation with the submittal of a Programmatic Biological Assessment on the NFIP for Oregon state listed species and critical habitat.

As a condition of the settlement agreement, FEMA consulted on NFIP minimum floodplain management criteria within Oregon, mapping activities, and implementation of the CRS, and implemented changes to the Conditional Letter of Map Change (CLOMC) application process. In July 2011, FEMA initiated formal consultation with the submittal of a Programmatic Biological Assessment on the NFIP for Oregon state listed species and critical habitat.

On April 4, 2016, NMFS completed its analysis of the effects of the NFIP on species listed as threatened or endangered under the ESA and issued a Biological Opinion (BiOp) titled, “Endangered Species Act (ESA) Section 7(a)(2) Jeopardy and Destruction or Adverse Modification of Critical Habitat Biological Opinion and Section 7(a)(2) ‘Not Likely to Adversely Affect’ Determination for the Implementation of the National Flood Insurance Program in the State of Oregon. NMFS Consultation Number NWR-2011-3197.”

### **Proposed Action Area**

The proposed action area includes any part of Oregon within the six NOAA Salmon and Steelhead Recovery Domains that is in a current or future mapped special flood hazard area (SFHA) in a community that is participating or may participate in the NFIP.

Oregon and any counties, incorporated municipalities, and tribal governments within the proposed action area will potentially be affected by the proposed action. All Oregon counties are within the boundaries of the proposed action area, with the exception of Baker, Harney, Klamath, Lake and Malheur Counties.

The proposed action area is defined by the boundaries of six NOAA Salmon and Steelhead Recovery Domains within Oregon: Oregon Coast, Southern Oregon/Northern California Coast, Willamette River, Lower Columbia River, Middle Columbia River, and Snake River. NOAA has mapped these Recovery Domains at

*<https://www.webapps.nwfsc.noaa.gov/portal/home/webmap/viewer.html>.*

Within these recovery domains, the proposed action applies to communities that are participating in the NFIP. However, since participation is voluntary and a community may join or leave the program, this EIS applies to both current and future NFIP communities. Information about the NFIP in Oregon is available through the Oregon Department of Land Conservation and Development at

*<https://www.oregon.gov/lcd/NH/Pages/NFIP.aspx>.*

For a proposed development activity to be subject to the new requirements, it must be proposed in a location subject to the minimum standards of the NFIP, which means that, at the time the activity is proposed, it is (1) within the geographic jurisdiction of a community that participates in the NFIP, and (2) it is within the mapped special flood hazard area (SFHA). To determine if a property is in the current effective SFHA, access the FEMA Flood Map Service Center at *<https://msc.fema.gov/portal/home>*.

The proposed action, best available data on flood risk, and climate change may add to or alter the mapped special flood hazard areas (SFHA) and require local land regulations adopt additional performance standards to protect threatened or endangered species. Therefore, any development activity within the proposed action area may be subject to new requirements resulting from the proposed action.

### **Purpose and Need for the Proposed Action**

In the BiOp, NMFS concluded that the current implementation of the NFIP in Oregon is likely to jeopardize the continued existence of 16 anadromous fish species and the Southern Resident Killer Whale, all of which are listed as threatened or endangered under the ESA, and result in the destruction or adverse modification of designated or proposed critical habitat for the 16 anadromous fish species. NMFS's conclusion establishes the need for the proposed action.

Federal regulation, at 50 CFR 402.14(h), requires NMFS to include Reasonable and Prudent Alternatives (RPA) in a jeopardy BiOp. NMFS proposed alternative approaches to NFIP performance standards that, according to NMFS, when implemented would avoid continued jeopardy for the listed species and habitat described in the BiOp. Based on the BiOp and NMFS's recommendations in the RPA, and pursuant to Section 7(a)(2) of the ESA, FEMA must make several changes to how the NFIP is implemented in parts of Oregon.

Therefore, the purpose of the proposed action is to implement changes to the administration of the NFIP that align closely to the recommendations in NMFS's BiOp in the proposed action area. The recommended changes are designed to avoid jeopardy to the ESA-listed species and critical habitats described in the BiOp, while also maintaining consistency with FEMA's existing NFIP statutory and regulatory authorities and the program's objectives. Proposed changes must be practicable and implementable by the NFIP-participating communities.

The proposed changes recommended in the BiOp include: (1) information changes provided by FEMA to Oregon NFIP-participating communities, (2) changes to mapping products, and 3) reporting requirements for these communities. FEMA must also ensure that NFIP-participating communities within the proposed action area adopt measures needed to avoid continued jeopardy and/or adverse habitat modification and collectively meet a standard of “no net loss” for three key natural floodplain functions essential to the survival of the ESA-listed species identified in the Oregon NFIP BiOp.

The Oregon NFIP BiOp and its RPA do not directly require any action of state, local, or tribal governments participating in the NFIP because the consultation on NFIP impacts to ESA-listed species occurred between FEMA and NMFS. FEMA does not have authority in local land use decisions or to regulate floodplain development. However, for communities to participate in the NFIP, they must adopt the minimum performance standards for the program in their local land use regulations. The ultimate authority to regulate development—including the provision and approval of permits, inspection of property, and citing violations—is granted to communities by the states. State and local governments, through their planning, zoning, and building code enabling authorities, make the determination of how a property must be developed.

### **Proposed Action and Alternatives**

As a result of the RPAs, FEMA must implement the NFIP such that its influence over the individual floodplain development actions permitted by local and tribal governments participating in the program does not jeopardize ESA-listed species and their critical habitat. FEMA determined the best approach to meeting the intent of the RPA was to develop an Implementation Plan outlining the actions the agency will take to ensure its implementation of the NFIP in Oregon is compliant with the ESA going forward.

The proposed action that FEMA will evaluate in the EIS is the execution of the Oregon Implementation Plan for NFIP-ESA Integration. A copy of the draft plan is available on the project EIS website (see the **ADDRESSES** section of this document). The draft plan comprises changes to information provided to communities, mapping products, and reporting requirements for NFIP-participating communities; as well as a range of potential measures communities will need to select from to collectively meet a “no net loss” standard of key natural floodplain functions essential to the survival of the ESA-listed species identified in the Oregon NFIP BiOp.

In 2016-2017, FEMA asked the Oregon Department of Land Conservation and Development (DLCD) to help identify any potential challenges with the NMFS approach to implementation outlined in the BiOp (the “reasonable and prudent alternative”). DLCD convened a set of stakeholder work groups to help identify barriers and to propose alternative approaches. In 2020-2021, the Oregon NFIP Implementation Planning Group, informed by the DLCD stakeholder work groups, held a series of workshops that culminated with the draft Implementation Plan that FEMA is now analyzing under NEPA. The proposed action is the outcome of this multi-year process.

In the EIS, FEMA will analyze a No-Action Alternative, under which FEMA will not implement any changes to the NFIP in Oregon. This alternative, required by the NEPA Implementing Regulations, would not fulfill the purpose and need.

The draft Implementation Plan identifies four paths that communities can take: model ordinance, ordinance checklist, approved community compliance plan, and ESA Section 10 Habitat Conservation Plan or ESA Section 4(d) Limit 12. These paths are not NEPA alternatives. All four constitute FEMA’s preferred alternative, as described in the draft Implementation Plan. A community may choose a single path for their entire jurisdiction or different paths in different parts of the jurisdiction. As each path leads to the same performance standard – no net loss of three key natural floodplain functions –



each path will constrain development in the floodplain and require appropriate mitigation for loss of natural floodplain function. Therefore, the impacts to resources analyzed in this EIS will not likely depend on the specific path.

The RPA and 2021 draft Implementation Plan identified some elements for future FEMA decision. This EIS will discuss the options for these elements; the final EIS will consolidate those elements into the final preferred alternative. These implementation options are not NEPA alternatives by themselves because they cannot stand alone and fulfill the purpose and need.

FEMA will also analyze other reasonable alternatives to the proposed action identified during the scoping period. Reasonable alternatives must fulfil the purpose and need and may include additional or alternative avoidance, minimization, and mitigation measures that achieve the no-net loss of floodplain function performance standard.

### **Summary of Expected Impacts**

The proposed action is to ensure that NFIP-participating communities within the BiOp Action Area adopt measures to collectively meet a standard of “no net loss” for key natural floodplain functions essential to the survival of the ESA-listed species identified in the Oregon NFIP BiOp. These functions, as defined in the 2021 draft Implementation Plan, are: flood storage, water quality, and riparian vegetation.

In accordance with 40 CFR 1508.1(g), the draft EIS will identify the effects of the proposed action and the alternatives. The regulations define effects to include ecological effects (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health. Effects may be direct, indirect, or cumulative. Effects may also be beneficial or detrimental. As discussed in the Comments section below, submission of public comments, research, studies, and data on these impacts are crucial to FEMA’s development of a comprehensive draft EIS.

Based on the Oregon NFIP BiOp, the DLCD stakeholder work groups, and the Oregon NFIP Implementation Planning Group process, FEMA initially expects the proposed action to benefit natural floodplain functions, threatened and endangered species habitat, and essential fish habitat. FEMA also initially expects the proposed action to potentially significantly impact communities, individuals, and businesses that intend on developing in the floodplain. FEMA anticipates that there may be adverse indirect impacts to community land use planning, economics, social structures, development plans, minority, low-income populations, Tribes, infrastructure, agriculture, aquaculture, energy production and transmission, and transportation.

At the end of the NEPA process, FEMA will issue a Record of Decision (ROD) identifying the environmentally preferable alternative (40 CFR 1505.2). FEMA will discuss preferences among alternatives based on economic, technical, and biological factors, and its statutory mission. FEMA will also explain how it considered these and other factors in making a final decision.

### **Anticipated Permits and Other Authorizations**

For communities to participate in the NFIP, they must adopt the minimum performance standards into their local land use regulations. Therefore, FEMA can implement the proposed Implementation Plan, make changes in mapping products, reporting requirements, and minimum standards without permits or other authorizations. However, communities will have to individually decide whether to (1) participate in or withdraw from the NFIP, and (2) if they choose to participate, determine which path(s) they will take to ensure that their individual floodplain development actions as influenced by the NFIP do not further jeopardize ESA-listed species and their designated critical habitats. FEMA cannot require a community to pursue a particular pathway for ESA compliance.

Pursuant to 44 CFR 60.3(a)(2), a community must obtain and maintain documentation of compliance with the appropriate Federal or state laws. Therefore, each individual project proponent (homeowner or other developer) is responsible for securing applicable local, state, and Federal permits.

### **Schedule for the Decision-Making Process**

After the scoping period, FEMA will prepare a draft EIS and file it with the Environmental Protection Agency (EPA). EPA will publish a notice of availability (NOA) and announce a minimum 45-day public comment period. After the public comment period ends, FEMA will review and respond to the comments received and develop the final EIS. A ROD will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

FEMA currently expects to make the draft EIS available to the public in late 2023. In accordance with 40 CFR 1501.10, FEMA anticipates that the agency will publish both the draft and final EIS and sign the ROD within two years from the issuance of this notice.

### **Public Scoping Process, including Scoping Meetings**

This NEPA scoping process is in addition to previous opportunities available to the public to understand and influence FEMA's draft Implementation Plan.

The purpose of the EIS scoping process is to gather input on the issues, concerns, possible alternatives, and potential significant impacts to the quality of the human environment that FEMA should consider in the EIS. Participants are anticipated to include, and are not limited to, agencies (Federal, state, county, and local), Tribes, public interest groups, nongovernmental organizations, businesses, trade associations, and individual members of the public.

As described under the **DATES** section of this notice, FEMA is facilitating virtual and in-person meetings as well as a virtual scoping room to accommodate and encourage

public participation. At these meetings, the public will have the opportunity to present comments on the scope of the EIS. FEMA representatives will be available to answer questions and provide additional information to meeting attendees. In addition to providing comments at the public scoping meetings, stakeholders may submit written comments as described in the **ADDRESSES** section. Comments may be broad in nature or restricted to specific areas of concern, but they should be directly relevant to the NEPA process or potential environmental impacts as described in the Comments section below.

### **Comments**

FEMA is seeking input on relevant information, studies, or analyses of any kind concerning impacts that result from the proposed action or alternatives. Specifically:

1. Potential effects (adverse or beneficial) that the proposed action could have on biological resources, including species and their habitat.
2. Potential effects that the proposed action could have on physical resources and natural floodplain functions.
3. Potential effects that the proposed action could have on socioeconomics, including demographics, employment, economics, minority, low-income populations, and Tribes, land use, zoning, housing, commerce, transportation, community growth, and community infrastructure.
4. Other possible reasonable alternatives to the proposed action that FEMA should consider, including additional or alternative avoidance, minimization, and mitigation measures that achieve the performance standard of no-net loss of three key natural floodplain functions.

FEMA regulation, at 40 CFR 1502.17, requires that FEMA append to the draft EIS or otherwise publish all comments received during the scoping process that identifies alternatives, information, and analysis for FEMA's consideration. FEMA respects each commentor's desire to withhold sensitive information (such as the costs associated with

development in the floodplain) but, at the same time, recognizes that one set of impacts that may be associated with the implementation of the draft plan is the economic, social, and equity burden that individuals, businesses, and communities may face.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform FEMA of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and possible alternatives to the proposed action as well as to economic, employment, and other impacts affecting the quality of the human environment.

Authority: 42 U.S.C. 4321, *et seq.*, and 40 CFR 1501.9.

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